

New York Coalition



For Open Government, Inc.

Advocating for timely access to information & meaningful citizen participation

www.nyopengov.org

**County Election Boards Fail to Comply
With Freedom of Information Law & Open
Meetings Law**

January 11, 2022

The [New York Coalition For Open Government](#) is comprised of journalists, activists, attorneys, educators, news media and concerned citizens who value government transparency and freedom of information laws.

Mission Statement:

Through education and civic engagement, the New York Coalition For Open Government advocates for open, transparent government and defends citizens' right to access information from public institutions at the city, county, and state levels.

Statement of Purpose:

We believe that, if government is of the people, by the people and for the people, it should also be open to the people. Government exists to serve its citizens, so access to public information should be simple. New York's Freedom of Information and Open Meetings Law make access to public records a right.

We, the people, can hold our elected officials responsible when government operates openly and honestly. The New York Coalition For Open Government works to ensure that all people have full access to government records and proceedings on the city, county, and state levels. Such access fosters responsive, accountable government, stimulates civic involvement and builds trust in government.

New York Coalition for Open Government

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The following members also contributed to the completion of this report: **Tina Carney, Patricia Irving, Casey Jones, Susan Laurailiard and Brad Racino**

Our meetings are held at 6:30 p.m. the second Thursday of the month through Zoom. Board President Paul Wolf, Esq. can be contacted at (716) 435-4976, or by email at paulwolf2@gmail.com. Our website is www.nyopengov.org and we have a [Facebook page](#).

New York’s Freedom of Information Law

Public Officer Law Article 6 begins with the following statement:

“The Freedom of Information Law, effective January 1, 1978, reaffirms your right to know how your government operates. It provides rights of access to records reflective of governmental decisions and policies that affect the lives of every New Yorker.”

County election boards are subject to the Freedom of Information Law (FOIL) and within five business days of receiving a FOIL request, are required to make the requested information available, deny the request in writing or respond in writing acknowledging the request and providing a timeframe by which a response will be provided.

New York Coalition For Open Government FOIL Request

Prior to sending a FOIL request, our members contacted as many Election Boards as we could by email and telephone asking four questions:

- 1) Do the Commissioners hold meetings and if so, how often?
- 2) Is the public notified about the meetings?
- 3) Are meeting agendas and documents posted online?
- 4) Are minutes kept and are they posted online?

The responses received to these inquiries are noted below:

County Board of Election

Response

Albany	Rachel Bledi stated that the Commissioners meet regularly, public notice is not provided, meeting agendas are not posted online, meeting minutes are kept but not posted online.
Broome	No response to email sent.
Chautauqua	No initial communication sent before doing FOIL request.
Dutchess	No communication sent before doing FOIL request.

Erie	No response received from email sent to both Commissioners.
Herkimer	No response to email sent.
Jefferson	Per Commissioner Michelle LaFave, meetings are held once a year, no public notice is provided, no agenda posted, minutes are kept but not posted.
Monroe	No response to email sent.
Nassau	No response to email sent or telephone calls.
Niagara	No response to email sent.
Oneida	Meet annually and as needed, public notice for meetings is issued, meeting agendas are posted online, meeting minutes are kept and posted online.
Onondaga	Per Commissioner Dustin Czarny, meetings are held the first Monday of the month, not open to the public. No public notice is provided. Minutes are kept but not posted online.
Ontario	No response to email sent.
Oswego	Per Commissioner Laura Brazak, the board has no public meetings, no meeting minutes and no public notices. The Commissioner seemed flabbergasted by the questions and did not understand what the board would meet about, what actions they would take publicly or privately, or what minutes would be logged.
Schenectady	Amy Hild stated meetings are held annually and for specific events. Meeting notices are posted on the web page, agendas are posted. Minutes are kept but not posted online.
St. Lawrence	No response to email sent.
Suffolk	No response to email sent or telephone calls.
Tompkins	No response to email sent.

Westchester No response to two emails and two follow-up telephone calls.

Out of 17 election boards contacted before a FOIL request was made, 11(65%) did not respond to emails or telephone calls seeking information. Based on the poor response received to our emails and telephone calls, a FOIL request was sent to each Election Board.

The New York Coalition for Open Government evaluated the response of a Freedom of Information Law (FOIL) request to nineteen county election boards across New York State. The email addresses used for the FOIL requests were obtained from the New York State Board of Elections website, which lists information for every County Board of Elections.

Each of the nineteen election boards were emailed the following FOIL request on July 14, 2021.

I am requesting a copy of meeting minutes for all Election Commissioner meetings held from January 1, 2018 until July 1, 2021.

Please provide this documentation to me via email.

*Paul Wolf, Esq.
President
New York Coalition For Open Government*

Compliance with Acknowledging a FOIL Request

New York’s Freedom of Information Law requires that government officials acknowledge a FOIL request in writing within five business days. Five out of the nineteen Election Boards complied with that law.

73% of election boards failed to acknowledge the FOIL request within five business days as required by law.

The five election boards that complied with the law and the number of business days it took for their response were:

Monroe County	1 day
Oswego	1 day
Herkimer	3 days
Schenectady	3 days

Erie 4 days, responded by telephone not in writing

Several election boards responded a day or two later than required by law, as follows:

Onondaga	6 days
Westchester	6 days
Nassau	6 days
Oneida	7 days

Incredibly, 10 election boards never acknowledged our FOIL request, a failure rate of 53%! The 10 election boards that never acknowledged our initial FOIL request, using the contact address listed on the New York State Board of Elections website, were:

Niagara, Dutchess, Suffolk, Chautauqua, Ontario, Albany, Broome, Tompkins, Jefferson, St. Lawrence.

Response to First FOIL Request Sent July 14, 2021

Board of Election	Acknowledged	Date
Albany	No	
Broome	No	
Chautauqua	No	
Dutchess	No	
Erie	Yes	7/20 by phone
Herkimer	Yes	7/19
Jefferson	No	
Monroe	Yes	7/15
Nassau	Yes	7/21
Niagara	No	
Oneida	Yes	7/22
Onondaga	Yes	7/21
Ontario	No	
Oswego	Yes	7/15
Schenectady	Yes	7/19
St. Lawrence	No	
Suffolk	No	
Tompkins	No	

Westchester

Yes

7/21

Second FOIL Request

Due to the poor response received, we sent a second FOIL request on August 18, 2021, to the 10 election boards that did not respond to our first FOIL request. This time the request was sent to the email address for the two election commissioners of each county listed on the County's website. If an email address for the commissioners was not listed, the request was sent to the general email address. The second FOIL asked for the same information as the first.

Only two of the 10 election boards acknowledged our second FOIL request within five business days as required by law. Dutchess and Suffolk acknowledged the second FOIL request within one day.

Two election boards did not acknowledge the first or second FOIL but did provide the information requested, Broome and Jefferson counties.

Six election boards did not acknowledge or respond in any way to both FOIL requests: Albany, Chautauqua, Niagara, Ontario, St. Lawrence and Tompkins counties. A failure rate of 32%.

Response to Second FOIL Request August 18, 2021

Board of Election	Acknowledged	Date
Albany	No	
Broome	No	
Chautauqua	No	
Dutchess	Yes	8/19
Jefferson	No	
Niagara	No	
Ontario	No	
St. Lawrence	No	
Suffolk	Yes	8/19
Tompkins	No	

Meeting Minutes Received

Board of Election	Minutes Provided	Date
Albany	No	
Broome	Yes	8/26
Chautauqua	No	
Dutchess	Yes	8/19
Erie	Yes	8/11
Herkimer	No	
Jefferson	Yes	9/7
Monroe	Yes	1/7
Nassau	Yes	8/5
Niagara	No	
Oneida	Yes	7/22
Onondaga	Yes	10/6
Ontario	No	
Oswego	No	
Schenectady	Yes	7/19
St. Lawrence	No	
Suffolk	Yes	8/19
Tompkins	No	
Westchester	No	

Only ten out of 19 board of elections provided meeting minutes, a success rate of 53%. Broome, Dutchess, Erie, Jefferson, Monroe, Nassau, Oneida, Onondaga, Schenectady and Suffolk counties. Oswego and Herkimer counties responded that no meeting records existed. It should be noted that the New York State Election Law requires County election boards to meet at least annually to determine which commissioner will serve as President and which as secretary. On January 7th, Monroe almost six months after requested, provided their meeting documents.

Application of the New York State Open Meetings Law to County Board of Elections

The New York State Open Meetings Law applies to a public body, which is defined as any entity which consists of two or more members, performing a governmental function for the state, agency or department, for which a quorum is required in order to conduct public business.

County Board of Elections consist of two election commissioners who perform the governmental function of conducting and overseeing elections. By law both Election Commissioners (one Democrat and one Republican), must agree to take action on all Board of Elections business.

As a public body, whenever the election commissioners call a meeting, advance notice must be provided to the public and meeting minutes must be taken. The Open Meetings Law, requires that public bodies such as County Election Boards take minutes at all meetings to record all motions, proposals, resolutions and other matters formally voted upon.

As previously stated, only ten of the 19 election boards provided copies of their meeting minutes as requested.

Broome – Provided copies of: Meeting minutes for their 2018, 2019, 2020 and 2021 annual meetings; Second and third quarter commissioner meetings for 2018; and petition objection hearings for 2018 and 2020.

Dutchess – Provided copies of hearing minutes for four hearings held in 2019 and 2021.

Erie – Provided copies of minutes for four meetings held in 2018, five meetings held in 2019, two meetings held in 2020 and one meeting held in 2021.

Jefferson – Provided minutes for their annual meeting held in 2021 and for a hearing held in 2021.

Nassau – Provided minutes for their annual meeting in 2018; and three meetings regarding petition objections in 2018. One meeting in 2019 and one in 2020 regarding a hearing.

Monroe- Provided 149 pages of minutes and petition hearings.

Onondaga – Minutes for meetings conducted in 2020: Jan, Feb, March. 2021: March, April, May, August, September and October.

Oneida – Minutes for their annual meeting in 2021 and a meeting regarding a court consent decree in 2021.

Schenectady- Minutes for the annual meetings held in 2018, 2019, 2020 and 2021.

Suffolk – Provided 214 pages of monthly meeting minutes held from 2018 to 2021. The minutes document personnel changes, hearings and board operational decisions.

Recommendations

Create An Entity With the Power to Enforce Violations of the Freedom of Information Law and Open Meetings Law

The lack of compliance with the Freedom of Information Law stated in this report is yet another example of how open government laws are disregarded without any consequences.

There is no entity in New York State that has the power to enforce violations of the Open Meetings Law or Freedom of Information Law. The State of Connecticut has a Freedom of Information Commission with the power to render decisions and penalties for violations of the law.

In Massachusetts and other states, the attorney general has the power to investigate and impose fines for violations of their open meetings law. The time has come for New York to create an entity with enforcement powers to address violations of open government laws.

The New York State Board of Elections Should Provide Training to All Election Boards Regarding Compliance with the Open Meetings Law and Freedom of Information Law

The New York State Board of Elections should provide training to all County election boards making it clear that the Open Meetings and Freedom of Information laws apply to them and that compliance is necessary.

On July 13, 2021 and August 18, 2021, emails were sent to the NY State Board of Elections requesting information regarding Open Meetings Laws memos, letters or training materials provided to county election boards. There has been no response.

Amend State Law to Make it Clear That County Election Commissioners Must Conduct Business Through Public Meetings

The Open Meetings Law requires public bodies such as county board of elections to provide public notice of their commissioner meetings, to post meeting documents online prior to the meeting and to maintain meeting minutes.

The problem is that county election commissioners rarely hold meetings. State law requires that the two election commissioners must agree in order for any action to be taken. But instead of holding meetings to conduct business such as political patronage hiring, the two commissioners typically sign off in writing instead of voting in a public meeting.

There have been several lawsuits alleging that an individual was improperly hired or fired because the action was not approved by the election commissioners in a meeting. Court decisions have determined that election commissioners are not required to hold meetings to conduct ministerial decisions such as hiring; that meetings are only required to carry out statutory duties of the board of elections.

When a town Board or city council hires to fill positions they do so by casting votes in a public meeting. Legislation should be adopted to address the bad court decisions made 30 years ago to require county board of elections to conduct their business through public meetings. We need to bring the patronage hiring and other business occurring behind closed doors into the sunlight for everyone to see.

The New York State Legislature should pass legislation making it clear that the New York State Board of Elections, New York City Board of Elections and all county board of elections are required to conduct business through public meetings.

Amend the Open Meetings Law to Require Election Commissioners to Deliberate in Public When Deciding Election Matters

Judicial or quasi-judicial proceedings are exempt from the Open Meetings Law. A 1996 opinion from the NYS Committee on Open Government states that hearings or oral arguments must be conducted in public but election board deliberations may occur in private as they are a quasi-judicial proceeding. However, the act of voting on an election issue must occur in public.

The way county board of elections handle election objections varies by county. For example, public hearings are held in Erie County. In Niagara County, however, public hearings do not occur. Instead a written “administrative determination” is made.

The Open Meetings Law contains an exception for quasi-judicial proceedings. Under this exception, deliberations for quasi-judicial proceedings can occur behind closed doors away from the public. In 1983, a very interesting amendment was made to this exception for local zoning board of appeals and the New York State Public Service Commission. The change made in 1983 requires zoning boards and the Public Service Commission to conduct their deliberations in public.

The Open Meetings Law should be amended to require county board of elections to conduct their deliberations regarding objections to petitions, etc. to occur in public. If we can exempt zoning boards from deliberating behind closed doors, we should also be able to exempt election boards.

The Public Should be Provided an Opportunity to Comment At All Election Board Meetings

The operation of elections at the state and local level are a critical part of our democratic system. The decisions made by election boards are significant and it is important that the public have the opportunity to comment and present information at Election Board meetings.

County election boards should provide an opportunity for the public to be heard at their meetings.

Board of Election Meetings Should Be Live-Streamed With Recordings Posted Online After Each Meeting

In 2019, the New York State Legislature passed legislation mandating that industrial development agencies live stream their meetings, post recordings of their meetings online within five days for a period of five years. The same legislation should be done for election boards at the state and local level.

Conclusion

The work performed by County election boards is important and should be done in public, so that interested citizens and the news media can observe what decisions are being made.

The results of our study show that election boards are not conducting their business in public. Meetings if they occur are happening often without the public or media being notified. The daily business and statutory duties of election boards are being handled behind closed doors while the public and news media are kept in the dark.

Compliance with the Freedom of Information Law and the Open Meetings Law is minimal.

The New York State Board of Elections should provide training to County election boards regarding the Open Meetings Law and Freedom of Information Law and the need for compliance with these laws.

The New York State Legislature has the ability to bring more sunlight to the operation of County Board of Elections by passing legislation as recommended.